



Legislative Research Council

MINUTES

State-Tribal Relations Committee

Senator Troy Heinert, Chair
Representative Shawn Bordeaux, Vice Chair

First Meeting
2015 Interim

Room 413, State Capitol
Pierre, South Dakota

Thursday, April 23, 2015

The first meeting of the State-Tribal Relations Committee for 2015 was called to order by Senator Jim Bradford, at 11:00 a.m. in room 413 of the State Capitol in Pierre.

A quorum was determined with the following members answering the roll call: Senators Jim Bradford, Troy Heinert, Betty Olson, and Craig Tieszen; and Representatives Shawn Bordeaux, Steve Hickey, Kevin Killer, Elizabeth May, and Lee Qualm (by telephone). Excused: Senator Ernie Otten.

Staff members present were Amanda Reiss, Senior Legislative Attorney; Stephanie Gruba, Fiscal Analyst; Amanda Jacobs, Research Analyst; and Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council (LRC).

An opening prayer was offered by **Representative Shawn Bordeaux**.

Approval of Minutes

A MOTION WAS MADE BY SENATOR HEINERT, SECONDED BY REPRESENTATIVE HICKEY, THAT THE MINUTES OF THE DECEMBER 29, 2014, MEETING BE APPROVED. The motion prevailed on a voice vote.

Comments

As the 2014 Chair of this committee, **Senator Jim Bradford** said that it is important for the committee to stand by the mission set in statute in 1993. SDCL 2-6-23 states *"The State-Tribal Relations Committee shall continuously study the relationship between the state and its political subdivisions and the tribes and their tribal governments. The committee shall give particular study and consideration to matters concerning jurisdiction, taxation, gaming, economic development and community relations. The committee shall serve as a forum for the discussion of issues of mutual concern to the state and the tribes and shall attempt to foster state-tribal cooperation. The committee shall draw upon public input from all those who may be concerned and knowledgeable about state-tribal relations whether Indian or non-Indian, whether tribal members or nontribal members. The committee may present draft legislation and policy recommendations to the Legislative Research Council Executive Board to effectuate its mission."*

Update on Indian Education

Ms. Mary Stadick Smith, Deputy Secretary, Department of Education, explained to the committee that Mr. Lowell Amiotte, Director of Indian Education for the Department of Education, was unable to attend today's meeting, and said that she was honored to address the committee in his absence.

In February of 2015, Governor Dugaard established the Native American Student Achievement Advisory Council through Executive Order (**Document #1**). This Council will hold their first meeting the end of April in Pierre. The two legislators appointed to the 22-member Council are Senator Troy Heinert and Representative Shawn Bordeaux. The Council will try to find ways to address the many gaps between tribal and non-tribal student achievements. The Busch Foundation has agreed to fund the work of this Council, which expects to have five meetings before submitting a final report in December to the Governor and the Legislature.

Ms. Stadick Smith distributed copies of the "Oceti Sakowin Essential Understanding and Standards" that was developed and prepared by the Oceti Sakowin Essential Understandings and Standards Work Group as a curriculum that teachers can use in the classroom (**Document #2**). This curriculum was prepared several years ago but it has been a challenge to get teachers to use these standards. The Department of Education is revising the social studies standards and will incorporate these Osceti Sakowin standards into the overall social studies standards. When the Department does training, the Osceti Sakowin standards will be included in the training.

The WoLakota Project has been ongoing for about two years. It consists of listening to elders and mentoring teachers. Ms. Stadick Smith shared one of the videos made through this project, featuring Ms. Dottie LeBeau explaining the development of the "Oceti Sakowin Essential Understanding and Standards" which will soon be incorporated into the State's social studies standards.

This is just one example of the many videos on the WoLakota website which can be found at: [WoLakota Project](#).

The second part of the WoLakota project is mentoring; helping teachers figure out how to incorporate these standards into their classrooms.

Mr. Amiotte has been working with the public universities in updating Native American studies. Mr. Amiotte has also been reaching out to Education majors to make sure they have some exposure to the Oceti Sakowin Standards.

An additional \$250,000 was appropriated for the JAG program and the Department of Education will be working with ten schools this next year. The graduation rate for students taking part in the JAG program is almost perfect.

The annual Indian Education Summit is scheduled for November 1-3, 2015.

Senator Bradford said that it is time to get serious about education and our young people's future. He said that we must begin to look down the road to where our children will be and what they will be doing. He continued by saying that he sees a whole different future for his grandchildren than he saw for his children, and that we need to look to the future.

Election of Officers

REPRESENTATIVE KILLER MOVED, SECONDED BY REPRESENTATIVE HICKEY, TO NOMINATE SENATOR HEINERT AS COMMITTEE CHAIR.

REPRESENTATIVE MAY MOVED, SECONDED BY SENATOR OLSON, TO NOMINATE REPRESENTATIVE QUALM AS COMMITTEE CHAIR.

SENATOR TROY HEINERT WAS ELECTED CHAIR OF THE STATE-TRIBAL RELATIONS COMMITTEE BY SECRET BALLOT.

SENATOR HEINERT MOVED, SECONDED BY REPRESENTATIVE KILLER, TO NOMINATE REPRESENTATIVE BORDEAUX AS COMMITTEE VICE CHAIR.

REPRESENTATIVE MAY MOVED, SECONDED BY SENATOR OLSON, TO NOMINATE REPRESENTATIVE QUALM AS COMMITTEE VICE CHAIR.

REPRESENTATIVE SHAWN BORDEAUX WAS ELECTED VICE CHAIR OF THE STATE-TRIBAL RELATIONS COMMITTEE BY SECRET BALLOT.

Senator Bradford turned the gavel over to Senator Heinert. **Senator Troy Heinert** thanked Senator Bradford for his hard work as the previous chair of this committee.

Update from the Department of Social Services

Ms. Lynne Valenti, Secretary, Department of Social Services, reported that a Memorandum of Understanding between the Standing Rock Sioux Tribe and the Department of Social Services (DSS) regarding Child Support procedures has been signed and the two agencies are working closely together. The Oglala Sioux Tribe began administering child protection about two years ago and DSS is assisting them with setting up the fiscal aspect of that program.

DSS is involved with several workgroups over the summer including:

1. Foster Parent Workgroup – created to look at improving communications and finding a way to have all the information in one place with easy accessibility. Senators Heinert and Haverly and Representative Rozum are all members of that workgroup, which plans to hold three meetings throughout the summer and fall.
2. Home and Community Based Workgroup – created to identify barriers faced by elders and adults with disabilities and examine what services are available to help meet the needs of these people. Senator Rampelberg and Representative Hunhoff are members of this workgroup which plans to conduct three meetings during the interim.

DSS hosts quarterly meetings with the tribes for learning about the issues the tribes have with Medicaid. Throughout session there was a group that met on a weekly basis to discuss Medicaid expansion. Senator Heinert was a member of that group. At the suggestion of this group, the State is asking the Federal Government if there can be some flexibility regarding Medicaid expansion requirements.

South Dakota uses the federal health insurance marketplace for assessing if an individual is eligible for Medicaid. Most of the new Medicaid eligibles are children. The most common reason for denial for eligibility is over the income requirements. If Medicaid were expanded in South Dakota to meet the full Federal guidelines, there would be 48,500 more people eligible.

In response to a question from Senator Bradford regarding foster home qualifications, Secretary Valenti said that there are some misunderstandings regarding these requirements. If the foster care is a relative or kinship placement, the provider does not have to be licensed but does still have to meet

the health and safety requirements, as well as have a background check. Secretary Valenti added that the DSS has reviewed the foster care rules and has revised some of the quirky requirements that were causing issues.

Representative Elizabeth May asked if there is a difference between payment for foster parents for Native American children and non-Native children, because of the Indian Child Welfare Act (ICWA). Secretary Valenti said that ICWA does not have any effect on foster care and that the amount paid to foster parents is the same no matter where the fostering takes place or what ethnicity the child is.

Senator Bradford asked about the 100% match offered by the Federal Government for tribal nursing homes, stating that the tribes should be reimbursed for all the years they did not receive the full match. Secretary Valenti explained that there is such a program available for tribal nursing homes, but many choose not to participate because there are so many requirements that need to be met and steps that have to be taken to qualify.

Representative Steve Hickey asked about a pending law suit regarding child care in South Dakota. Secretary Valenti said that because this is pending litigation, she is not able to answer specific questions about it. The Secretary did add that there are proposed federal regulations from the Bureau of Indian Affairs recommending changes to the guidelines.

Representative Kevin Killer asked if the State is taking a position on those changes in regulations. Secretary Valenti said that they are in the process of reviewing the proposed regulations and are still in the analysis stage.

Update from the Department of Tribal Relations

Mr. Steve Emery, Secretary, Office of Tribal Relations, read the mission statement for the Department of Tribal Relations. *"It is the mission of the SD Department of Tribal Relations: to recognize the nine sovereign tribes who share our geographical borders as distinct political entities, to support their self-governance efforts, and to work with their chosen leaders in a cooperative government to government relationship in order to improve the quality of life for all South Dakota citizens. To identify, develop and/or coordinate federal, state, and local resources to increase partnership between state and tribal agencies. To introduce and/or support any legislation that would improve the quality of life for the Native American population in the state."*

Secretary Emery reported that the Tribal State Relations Day that was held in February focused on agriculture. He continues to work with several of the tribes on agricultural opportunities.

The South Dakota's nine tribes, the Department of Tribal Relations, and the Department of Veterans Affairs have been collaborating on the development of a South Dakota Code Talkers Memorial. There were over 100 Lakota Code Talkers from South Dakota. The plan is to place the Memorial somewhere on the Capitol campus in Pierre.

Secretary Emery continues to work with the Governor's Office of Economic Development. Some of the tribes are finding ways to develop tourism as a way to bring economic development to their area. The Sisseton-Wahpeton Oyate are working on that right now. The Oglala Sioux Tribe at Pine Ridge has had tourism programs for years.

The new Secretary for Game, Fish and Parks came from Alaska where Game, Fish and Parks is mandated to work with the tribes. With this background, the new Secretary has been very willing to work with the tribes here in South Dakota.

Secretary Emery said that he is involved in the juvenile justice study group. According to him, it is important that we continue to work on protecting our children. Communication needs to be improved amongst all agencies involved with juvenile justice.

As far as Public Safety, the Crow Creek Sioux Tribe does have an agreement with the State Highway Patrol that allows the patrol onto tribal land. There are other tribes looking into developing that same type of agreement.

Representative Shawn Bordeaux said that the Rosebud Sioux Tribe would like to have an agreement with the Highway Patrol, but they do not want to give up control over their jurisdiction. Secretary Emery explained that Crow Creek did not give up sovereignty, but that the Highway Patrol are sworn in as tribal officers and all is handled through the Crow Creek Tribal system. In addition to assistance on the highways, if you have a meth problem and would like the use of drug dogs, the Highway Patrol will bring in their dogs. Entering into these relationships does not do away with sovereign rule, but is a way to work together on these issues of crime.

Secretary Emery serves on the SD Board on Geographic Names. The Board is looking at changing the name of Harney Peak. They are in the process of conducting public hearings regarding this name change. Once the Board has agreed on a name, the Federal Government will have to approve that name. One name that has been proposed is Black Elk Peak. Representative Bordeaux said that he would like to suggest Owl's Nest Peak.

Secretary Emery is looking at revising the burial laws in South Dakota. There are a lot of burial grounds here and they need to be recognized as burial grounds, not archeological sites. After further study, legislation will be drafted and presented to this committee for consideration and input.

Senator Bradford said that a lot of churches on tribal land have been abandoned and who will take care of those cemeteries connected to those churches. Secretary Emery said that he would talk to the state archeologist about those abandoned churches and cemeteries.

Representative Killer thanked Secretary Emery for all of his hard work and for looking into the burial ground issue. Representative Killer pointed out that a major issue in Pine Ridge is the high suicide rate. In the past few months, there have been 14 suicides and 240 attempted suicides that. Secretary Emery said that no one has contacted him asking for assistance with this issue and the State does not do anything without an invitation from the Tribe. The late Michael Jandreau who was the Chairman of the Lower Brule Sioux Tribe had asked for help starting a youth leadership program just before his death.

Representative May said that there was an article in the Wall Street Journal regarding the incarceration of Native Americans and how the tribes need to have more input as to who handles the prosecution of Native Americans. Representative May added that a large percent of the Pennington County population is Native American and we have to curb this idea to incarcerate everyone. She asked Secretary Emery to work on this issue and he said that they would get a copy of that article.

Representative Hickey said that criminal justice is one of the two reasons he requested to be appointed to this committee. He said that the Legislature recently passed two criminal justice packages and there needs to be a third package reforming the Native American criminal justice system.

Secretary Emery said that he attends the Unified Judicial System's annual meeting and encourages tribal judges to attend, but they do not do so very often. He will continue to encourage them so they can work on these issues together.

Senator Craig Tieszen explained how criminals love jurisdictional boundaries because the boundaries confuse things and the criminals know how to take advantage of that. The State and the Tribes need to continue to work on cooperative agreements when possible. One of the best accomplishments of late is state law enforcement training facilities working with tribal law enforcement officers. By doing so, we build relationships between non-tribal and tribal officers.

Representative May said that a judge in North Dakota by the name of Ralph Erickson is also calling for reform in the tribal courts.

Senator Heinert thanked Secretary Emery for his report and commented that the committee will continue to call on the Department of Tribal Relations.

Update from the Department of Corrections

Ms. Laurie Feiler, Deputy Secretary, Department of Corrections, gave a PowerPoint presentation, "Overview of SD DOC and Native American Programs and Services" (**Document #3**) [DOC PowerPoint Presentation](#).

Ms. Feiler said that the DOC does not work with people on probation, probation falls under the Unified Judicial System. DOC works with juvenile and adult offenders in custody and on parole. Once released from prison, the offender is placed on parole. Most people who are going to violate parole do so in the first or second year after being released. In the past, people have been placed on parole for too many years and DOC has done reform in that area and has reduced the number of people on parole.

In South Dakota, 29.3% of the adult inmate population is Native American; that rate is higher for female prisoners than for male prisoners. The number of youth under DOC custody in December of 2014 was 593. Of those, 229 were Native American.

The DOC has had a tribal liaison program since 2006. That program serves as a connection between the people at home and the cultural needs for the inmates. All DOC staff receive cultural diversity training.

The Tribal Pilot Program which came out of the Criminal Justice Reform Initiative is underway with the Sisseton-Wahpeton Oyate. This includes a parole agent hired by the tribe but trained with State Parole; a tribal wellness team assigned to each individual case; and 36 participants in the program at this time.

This project is working very well and DOC is in the planning stage for a pilot program with the Standing Rock Sioux Tribe that will focus more on mentoring.

In 2015, the Legislature passed SB73 which includes sections 8 and 9 that says that the Department of Tribal Relations in coordination with necessary state agencies, treatment providers, law enforcement, and stakeholders, shall evaluate and make recommendations to improve outcomes for Native American children in the juvenile justice system. The final report will be submitted to the Oversight Council, the Governor, the Chief Justice, and the Legislature by July 1, 2017.

Senator Bradford thanked Ms. Feiler for the great amount of work she does for the Native Americans who are in the correctional system.

Committee Discussion

The committee had discussed the high suicide rate on the reservations. Representative Hickey suggested asking the Governor to have the flags flown at half-mast on May 8 in memory of those who

committed suicide. May 8 is the date when the President is in the state. Representative Killer said that it is more appropriate to honor youth and celebrate their accomplishments rather than dwell on the negative.

Senator Betty Olson said that it seems like the more recognition this issue gets, the more suicides are attempted. Senator Olson added that this is not just an issue for Native youth, but suicide rates have increased for non-Native youth as well.

Representative Bordeaux said that he was surprised when Secretary Emery said the state is not addressing the issue of suicides on the reservation because the tribes have not asked for assistance. Senator Bradford explained that the Secretary meant that the state will not force themselves on the tribes but will wait to be invited. The tribes do not want the state coming in and telling them what to do. Senator Bradford continued by saying that this committee has to remember that the relationship between the state and the tribes is fragile as glass.

Senator Heinert suggested waiting until September 10 which is Suicide Awareness Day and asking the flags to be lowered on that day. Senator Heinert added that it is so sad to have to have this conversation.

Representative Killer suggested looking for a way to celebrate our youth rather than memorializing suicide.

Senator Heinert said that a letter should be drafted to the Governor from this committee saying that we would like to see something done to bring awareness to this issue and that it needs to include some type of celebration of our children.

Representative Hickey said that this is the 25th anniversary of Governor Mickelson's Year of Reconciliation and that something needs to be done to continue that idea. Representative Hickey would like to see a Truth and Reconciliation Commission established to address the issue of racial injustice in South Dakota. It is this type of commission that got South Africa out of apartheid.

After much discussion, Senator Heinert said that this committee must keep the issue of improving race relations in our state as first priority.

REPRESENTATIVE HICKEY MOVED, SECONDED BY REPRESENTATIVE BORDEAUX, THAT A LETTER BE SENT TO THE GOVERNOR REQUESTING A REAFFIRMATION OF THE YEAR OF RECONCILIATION AND ASKING THAT RECONCILIATION BE AN ONGOING FOCUS OF OUR STATE. The motion prevailed unanimously on a voice vote.

REPRESENTATIVE HICKEY MOVED THAT THE COMMITTEE CONSIDER ESTABLISHING A TRUTH AND RECONCILIATION COMMISSION IN SOUTH DAKOTA THAT ADDRESSES PAST, PRESENT AND FUTURE DISCRIMINATION. Motion failed for lack of a second.

Senator Heinert asked that rather than voting on this as a motion, the committee adopt this concept as a topic for study.

Future Meeting Dates

The committee agreed that the next meeting date will be July 8, the following meeting will be either September 22 or 23, and the final meeting for this interim will be the third week in December during the Lakota Nation Invitational.

Adjournment

SENATOR OLSON MOVED, SECONDED BY REPRESENTATIVE KILLER, THAT THE STATE-TRIBAL RELATIONS COMMITTEE BE ADJOURNED. The motion prevailed unanimously on a voice vote.

The committee adjourned at 4:15 p.m.

This meeting was held in a physically accessible location. Any individual needing assistance, pursuant to the Americans with Disabilities Act, should contact the Legislative Research Council (605-773-3251) in advance of the meetings to make further arrangements.

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